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sentations are equally affected. The result is that the statute prescribes a rational limit to those facts which may be made the subject matter of either a warranty or representation that will avoid the policy. Warranties still remain in the nature of conditions precedent, and the issue of reliance thereon is not involved. That this is an important distinction, is evident, when we consider that, where breach of warranty is the defense, there is one less issue of fact to go to a jury always ready to give a verdict unfavorable to the insurance company.¹³

DOUBLE TAXATION OF INHERITANCE OF PERSONALTY. — Through differences in their express terms and different interpretations which the courts have given general terms, state inheritance taxes on personal property are divisible into three distinct classes: (1) those covering all personalty actually within the state,¹ (2) those taxing all personalty, wherever located, of a decedent domiciled in the state,² and (3) those including all personalty in the state and such without as belonged to a decedent domiciled therein.³ An inheritance tax is not a tax on property, but is the price exacted by the state for the privilege it affords in permitting property to be transmitted by will or descent.⁴ Thus, clearly, the state where the property is located may tax its succession.⁵ The right of the state of domicile to tax has usually been explained on the fiction of *mobilia sequuntur personam*, the same courts inconsistently supporting a tax on personalty without the state on this ground,⁶ and one on a foreigner's property within the state on the ground that the property is actually in their control.⁷ The only conceivable explanation of the right of the state of domicile to tax the succession of foreign personalty is that, almost universally, it furnishes the law according to which distribution is made.⁸

There is a tendency for states which are wholly unconnected with the succession to impose inheritance taxes. In several states succession to stock in a foreign corporation is taxed if the corporation has property in the state, even though the owner was domiciled elsewhere.⁹ The

¹³ *Scottish Union & Nat. Ins. Co. v. Wade*, 127 S. W. 1186 (Tex. Civ. App.). A statute required that materiality be submitted to the jury. The jury found that the amount of other insurance was immaterial. *Cf. March v. Metropolitan Life Ins. Co.*, *supra*, where the court said the materiality of the same fact was too clear to leave to the jury.

¹ See *In re Weaver's Estate*, 110 Ia. 328; *In re Joyslin's Estate*, 56 Atl. 281 (Vt.).

² See *Gallup's Appeal*, 76 Conn. 617.

³ See *Callahan v. Woodbridge*, 171 Mass. 595, and *Frotheringham v. Shaw*, 175 Mass. 59. These decisions and those *supra* are examples of the different interpretation courts have given the same words, the tax in all these states being on property "within the jurisdiction of the state."

⁴ See *Magoun v. Illinois Trust & Savings Bank*, 170 U. S. 283, 288; *State v. Dalrymple*, 70 Md. 294, 299.

⁵ *Matter of Bronson*, 150 N. Y. 1.

⁶ See *Frotheringham v. Shaw*, *supra*.

⁷ See *Callahan v. Woodbridge*, *supra*.

⁸ *Lawrence v. Kittredge*, 21 Conn. 577; *Wilkins v. Ellett*, 108 U. S. 256, 258.

⁹ In Vermont the statute expressly taxes all transfers of stock of foreign corporations with their principal place of business in the state. *VT. PUB. STAT.* (1906), § 876. In a number of states under general statutes such taxes are being claimed, if the corporation has property in the state. See *BANCROFT, INHERITANCE TAXES*, 19.

legality of such taxes is, as yet, unadjudicated. In a recent case, *In re Cummings' Estate*, 127 N. Y. Supp. 109 (Sup. Ct., App. Div.), a testator left personal property both in New York and California. The California property was administered there according to California law, the court deciding that the testator was domiciled in that state. Later, administration proceedings were instituted in New York, and that court determined that the deceased was domiciled in New York and that the personalty in California was consequently subject to a New York inheritance tax. It is difficult to see what is the basis for the New York tax. To be sure the determination of domicile by one court is not conclusive on another;¹⁰ and where domicile is necessary for jurisdiction a judgment based on an erroneous adjudication of it need not be regarded by a sister state.¹¹ But in the principal case the domicile is not a jurisdictional fact, there being nothing to prevent a state from distributing property within its borders according to any law it pleases. It is uncontroverted that a distribution based on an erroneous determination of domicile cannot be disregarded in proceedings in another state.¹² Thus the California court has effectively distributed wholly in accordance with its own law, so that the only basis for a tax by the state of domicile — that it has furnished the law of distribution — seems lacking.

Even where personalty is administered according to the law of the testator's domicile the foundation for a tax by the state of the domicile seems rather fanciful. The sovereign of the *situs* has merely chosen to allow property within its jurisdiction to pass according to other principles of distribution than its own, and requires no actual co-operation for such a transfer to be effective. Though a number of states have upheld such taxes,¹³ there are opinions which seem adverse to them.¹⁴ While the Supreme Court of the United States has not passed upon the question,¹⁵ it has recently shown itself opposed to double taxation, repudiating the fiction of *mobilia sequuntur personam*,¹⁶ so that it seems not unlikely that it will hold such taxes illegal.

THE THEORY OF RESTRICTIVE AGREEMENTS AS TO A BUSINESS. — The principle is settled that equity will restrain the breach of an agreement between the grantor and the grantee, restricting the use of land, both by the grantee himself, and by all subsequent purchasers of the land with notice, whether or not an easement or a covenant running with the land is created.¹ But it is not agreed upon what theory this principle

¹⁰ *Overby v. Gordon*, 177 U. S. 214.

¹¹ *Andrews v. Andrews*, 188 U. S. 14.

¹² *Tilt v. Kelsey*, 207 U. S. 43. See *Overby v. Gordon*, *supra*.

¹³ *In re Merriam*, 141 N. Y. 479; *Frothingham v. Shaw*, *supra*.

¹⁴ See *In re Joyslin's Estate*, *supra*; *Albany v. Powell*, 2 Jones (N. C.) 51.

¹⁵ *Blackstone v. Miller*, 188 U. S. 189, has been referred to as supporting such a tax, and there is a *dictum* (p. 204) to that effect. Yet the decision merely upholds a tax by the state of the *situs* where the state of domicile is also taxing.

¹⁶ *Union Transit Co. v. Kentucky*, 199 U. S. 194, was revolutionary in overthrowing a tax by the state of domicile on foreign personalty, but *New York, Central R. v. Miller*, 202 U. S. 584, supported a tax on personalty periodically without the state but not subject to taxation elsewhere.

¹ *Tulk v. Moxhay*, 2 Ph. 774; *Parker v. Nightingale*, 6 All. (Mass.) 341; *Kirkpatrick v. Peshine*, 24 N. J. Eq. 206.